

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

XAVIER R. MARSHALL,

Defendant.

Case No. 22-CR-56-JPS

ORDER

On March 1, 2022, the grand jury returned a three-count Indictment, charging Defendant with violations of 21 U.S.C. § 841(a)(1), (b)(1)(C), and (b)(1)(D) and 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(c)(1)(A)(i). ECF No. 1. On December 20, 2022, the parties filed a proposed Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreement under seal,¹ accompanied by a motion to seal, indicating that Defendant has agreed to plead guilty to Counts One and Three of the Indictment. ECF Nos. 35–36.

Federal Rule of Criminal Procedure 11(c)(1)(C) permits the Government to agree, as part of the plea agreement, to a specific sentence that would “bind[] the court once the court accepts the plea agreement.” The plea agreement indicates that the parties “agree that the appropriate disposition of the case is a term of imprisonment of 36 months.” ECF No. 35 at 7. Because the parties reached the plea agreement pursuant to Rule 11(c)(1)(C), they also sought a pre-plea sentencing report, which the Probation Office filed on February 28, 2023. ECF No. 42.

¹Such a motion would protect the confidentiality of the plea negotiations in the event that the Court had declined to accept the plea.

The parties appeared before Magistrate Judge Stephen C. Dries on March 21, 2023 to conduct a plea colloquy pursuant to Federal Rule of Criminal Procedure 11. ECF No. 44. Defendant entered a plea of guilty as to Counts One and Three of the Indictment. *Id.* After cautioning and examining Defendant under oath concerning each of the subjects mentioned in Rule 11, Magistrate Judge Dries determined that the guilty plea was knowing and voluntary, and that the offenses charged were supported by an independent factual basis containing each of the essential elements of the offenses. *Id.*

That same day, Magistrate Judge Dries filed a Report and Recommendation with this Court, recommending that: (1) Defendant's plea of guilty be accepted; (2) a presentence investigation report be prepared; and (3) Defendant be adjudicated guilty and have a sentence imposed accordingly. ECF No. 45. Pursuant to General Local Rule 72(c), 28 U.S.C. § 636(b)(1)(B), and Federal Rule of Criminal Procedure 59(b), the parties were advised that written objections to that recommendation, or any part thereof, could be filed within fourteen days of the date of service of the recommendation. *Id.* To date, no party has filed such an objection. The Court has considered Magistrate Judge Dries's recommendation and, having received no objection thereto, will adopt it.

Additionally, because the Court has adopted the plea agreement and there is no longer an interest in preserving the confidentiality of the plea negotiations, the parties' motion to seal, ECF No. 36, will be denied as moot and the seal on plea-related docket entries in this case (ECF Nos. 35, 37, 43, 44, 45) will be lifted.

Accordingly,

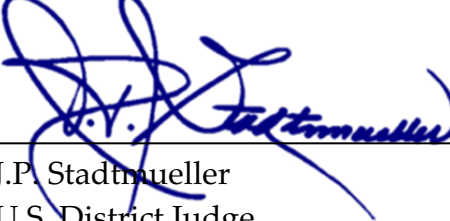
IT IS ORDERED that the Government's motion to seal, ECF No. 36, be and the same is hereby **DENIED as moot**; the Clerk of Court is **DIRECTED** to unseal the plea-related docket entries in this case (ECF Nos. 35, 37, 43, 44, 45);

IT IS FURTHER ORDERED that Magistrate Judge Stephen C. Dries's Report and Recommendation, ECF No. 45, be and the same is hereby **ADOPTED**; and

IT IS FURTHER ORDERED that this matter be and the same is hereby set for a sentencing hearing before Judge J.P. Stadtmueller on **July 6, 2023 at 11:30 A.M.** in Courtroom 425, 517 E. Wisconsin Ave., Milwaukee, WI 53202.

Dated at Milwaukee, Wisconsin, this 7th day of April, 2023.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge